HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 811 of 2001
(old no. 2284/96)

1. Bhopal Siongh
2. Hem Raj
3. Jai Prakash
4. Indra Pal
5. Har Dayal
6. Bheem, All sons of Lakhan Singh residents of Bheratpur, P.S. Kahipur, District U.S. Nagar

..... Applicants

versus

1. State of U.P.
2. Yaswant Singh s/o Sri Yas Pal Singh, residents of Bharatpur, P.S. Kashipur, District Udham Singh Nagar

..... Respondents

Dated: 20.11.2006

Hon'ble Rajesh Tandon, J.

Heard Sri M.C. Kandpal, Sr. Advocate assisted by Sri S.S. Chaudhari counsel for the applicant and Sri Lalit Verma, Advocate on behalf of the State.

By the present petition under section 482 Cr.P.C., the applicant has prayed for quashing of the complaint dated 13.11.1995 and summoning order dated 28.5.1986 in Case No. 2139 of 1995 under sections 147, 148, 149, 307, 452, 506, 302 I.P.C. Police Station, Kashipur.

According to the applicants a complaint was filed by the respondent no. 2 Yaswant Singh before the Addl. Chief Judicial Magistrate, Kashipur under sections 147, 148, 149, 307, 452, 506, 302 I.P.C. against the applicants alleging that all the six

members came to the house of opposite party no.2 on 22.10.1995 at 21.00 PM in the absence of the complainant and his father and brother had caused fire arm injury on his sister namely Km. Monika.

The grievance of the petitioner is that summoning order dated 28.5.1996 summoning the accused applicant is based on the basis of the complaint whichcannot be allowed to proceed in as much as once cognizance on the basis of F.I.R. had been taken, it is not open for the Presiding Officer to proceed simultaneously with the complaint case and the F.I.R. also.

Section 210 Cr.P.C. prvodes for the procedure to be followed when there is a complaint case and police investigation in respect of the same offence. Section 210 Cr.P.C. reads as under:

> *(1) When in a case instituted otherwise than on a police report (hereafter referred to as a complaint case) it is made to appear to a the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the Police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.*
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> *(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case*

arising out of the police report as if both the case were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

Counsel for the petitioner has informed this Court that on 16.11.1996 in pursuance of the F.I.R. final report has already been filed. The complaint case was to be tried along with the F.I.R. case No. 1078 of 1995 but due to the pendency of the petition under section 482 Cr.P.C. this matter could not be taken by the Magistrate concerned along with the F.I.R.

In view of the above, the case is sent to the Additional Chief Judicial Magistrate Kashipur for passing appropriate order in accordance with law.

However, the summoning order dated 28.5.1996 shall remain in abeyance for a period of four months. The Magistrate concerned is directed to pass final order in the mean time.

Accordingly, petition under section 482 Cr.P.C. is disposed of.

Dated: 20.11.2006 **Rajesh Tandon, J.**

*Dhyani